

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARKELL YOUNG,

Defendant.

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Case No. 1:21-cr-10112-STA-1

**ORDER GIVING DEFENDANT NOTICE OF INTENT TO CONSIDER UPWARD
DEPARTURE AND UPWARD VARIANCE AT SENTENCING**

Before the Court is the United States of America's Notice of Intent to Seek Upward Departure and Upward Variance from the Guideline Sentence and Sentencing Memorandum (ECF No. 478) filed November 18, 2024. A sentencing hearing is currently set in this matter for December 17, 2024. Rule 32(h) of the Federal Rules of Criminal Procedure requires the Court to give the parties reasonable notice that it is contemplating a departure from the applicable sentencing range "on a ground not identified for departure either in the presentence report or in a party's prehearing submission." Fed. R. Crim. P. 32(h). Both the PSR and the government's position paper have identified a number of grounds which could support an upward departure in this case. The Court hereby gives Defendant notice that it is considering an upward departure from the Guidelines sentence for any and all of the reasons listed in the PSR (ECF No. 428) and the government's position paper (ECF No. 478). The Court has not identified any grounds for an upward departure other than those contained in the PSR and the United States' paper.

The United States Court of Appeals for the Sixth Circuit has held that a district court should "afford a defendant a reasonable opportunity to respond" to a court's intent to vary based on

information not found in the PSR. *United States v. Coppenger*, 775 F.3d 799, 804 (6th Cir. 2015) (citing *Irizarry v. United States*, 553 U.S. 708, 714 (2008)). To facilitate Defendant's opportunity to respond, the Court gives notice that it will consider at sentencing all of the grounds supporting an upward variance given in the PSR as well as in the government's position paper.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
UNITED STATES DISTRICT JUDGE

Date: December 3, 2024